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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931

No. ~~320~~ 55

CEASARO SGRO, PETITIONER,

vs.

THE UNITED STATES OF AMERICA, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

IRVING K. BAXTER,
Counsel for Petitioner.

(36,734)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1931.

No. 920

CEASARO SGRO, PETITIONER,

vs.

THE UNITED STATES OF AMERICA, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Ceasaro Sgro, respectfully represents that he is a citizen of the United States, residing in the Village of Bouckville, N. Y., and is the plaintiff in error in the above-entitled matter; that on the 2nd day of August, 1926, Federal Prohibition Agent B. G. Silvernail and others searched defendant's hotel on the Main Street at Bouckville, N. Y., under color of authority of a search warrant issued by W. M. Arthur, U. S. Commissioner at Rome, N. Y., on the 6th day of

July, 1926; that because this search warrant was not "executed * * * within ten days after its date," it became void by statute (Sec. 621, U. S. Code, p. 508); that after becoming void as aforesaid said warrant was returned to the Commissioner's office by Prohibition Agent Vandiver with the request that it be redated, and on the 27th day of July, 1926, the date of the warrant was changed (by the Commissioner's stenographer) to that date and mailed back to the said prohibition agent.

The search warrant was illegally issued, without probable cause, solely upon the affidavit of Prohibition Agent Dodd, made July 6, 1926, wherein said agent alleged as his opinion that on June 29, 1926, he purchased at the premises a drink of beer, having an unlawful alcoholic content, without showing or having any expert qualification to give such opinion evidence.

At the December, 1926, term of the U. S. District Court for the Northern District of New York, petitioner moved to restrain the use of evidence unlawfully obtained by Federal prohibition agents through their search and seizure at petitioner's said hotel premises, under color of authority of said illegal and void warrant, on said 2nd day of August, 1926. The particular grounds of the motion were that the search warrant was void under the statute, because it was not served within ten days after its date; that it was illegally issued, without probable cause, in that the affidavit of Agent Dodd failed to state any facts, but instead thereof stated merely unwarranted and incor-

rect opinions and conclusions of the affiant, and that the evidence having been obtained by Federal agents through search and seizure under color of authority of an illegal and void search warrant, was therefore obtained without any warrant or authority in law, and in violation of petitioner's constitutional rights under the Fourth Amendment to the Constitution of the United States, and the use of such evidence against the defendant would be in violation of his rights under the Fifth Amendment to the Constitution.

The motions were denied, the petitioner was arraigned, and pleaded not guilty before the court upon the charges of illegal sale of beer to Agent Dodd on June 29, 1926, and illegal possession of beer and one pint of gin claimed to have been seized by said agents on execution of the search warrant at petitioner's premises on the 2nd day of August, 1926. The case then proceeded to trial. The evidence obtained by search and seizure under color of authority of said illegal and void search warrant was used over the objections and exceptions of the defendant on the constitutional grounds as aforesaid. The jury disagreed on the charge of sale, but rendered a verdict of guilty upon the charge of possession, and the court rendered its judgment of conviction accordingly and fined the defendant $500.00.

The case was reviewed on writ of error by the Circuit Court of Appeals for the Second Circuit, and judgment of the District Court was affirmed without opinion on the 18th day of January, 1932. On the 28th day of January, 1932, the plaintiff in error pe-

titioned for a rehearing, and urged to the attention of the Circuit Court; that admittedly the search warrant was issued on the 6th day of July, 1926; that it was not served within ten days of its date of issue, as required by statute, and therefore became void under the statute; that the mere redating of said void search warrant on the 27th day of July, 1926, did not and could not revive or validate said void warrant; also, that it was not competent for the affiant to state in the affidavit for the search warrant that the liquid he bought was beer having an unlawful alcoholic content, because he showed no expert qualification to give such opinion evidence; that it was also improper for him to testify that he tested the liquid, because he did not show that he could as an expert intelligently have done so; that the judgment of conviction was based solely upon the illegal evidence obtained by prohibition agents through their unlawful search of defendant's premises under color of authority of said illgal and void search warrant; that said search violated the defendant's rights under the Fourth Amendment to the Constitution, and the use of the evidence obtained by it against the defendant violated his rights under the Fifth Amendment to the Constitution.

The questions represented by the assignments of error in this cause are of broad, general interest because they relate generally to the issuance and execution of search warrants and to the rights of the people under the Fourth and Fifth Amendments to our Constitution, which rights this Court has frequently

declared to be indispensable to the full enjoyment of personal security, personal liberty, and private property and of the very essence of constitutional liberty.

The grounds upon which it is insisted that the judgment of the Circuit Court of Appeals should be reversed are: That the said court has here decided important questions of Federal law in a way probably untenable, in conflict with the decisions of other Circuit Courts of Appeals on the same matter, and in conflict with applicable decisions of this Court; because—

> (*a*) The said search warrant was void under Sec. 621, U. S. Code, p. 508; because it was not executed within ten days of its date and "after the expiration of this time the warrant, unless executed, is void";
>
> (*b*) The affidavit upon which the search warrant was issued did not "set forth the facts tending to establish the grounds of the application," etc., as required by Sec. 615, U. S. Code, p. 508;
>
> (*c*) The search and seizure having been made under color of authority of an illegal and void search warrant was, therefore, made without any warrant or authority in law and in violation of petitioner's rights under the Fourth Amendment to the Constitution of the United States; and the use of the evidence so illegally obtained violated the petitioner's rights under the Fifth Amendment to our Constitution,

as more fully appears in petitioner's brief hereto annexed.

Your petitioner believes that the aforesaid judgment of the Circuit Court of Appeals is erroneous, and that this honorable Court should require the said case to be certified to it for its review and determination, in conformity with the provisions of the Act of Congress in such cases made and provided.

WHEREFORE your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding the said court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein entitled Ceasaro Sgro, plaintiff in error, *vs.* United States of America, defendant in error, No. 11777, to the end that the said case may be reviewed and determined by this Court, as provided in Judicial Code, Sec. 240, or that your petitioner may have such other or further relief or remedy in the premises as to this Court may seem appropriate and in conformity with the said Act, and that the said judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this honorable Court.

And thus your petitioner will ever pray.

CEASARO SGRO,
Petitioner.

IRVING K. BAXTER,
Attorney for Petitioner.

BRIEF IN SUPPORT OF PETITION.

There was no formal opinion written by the trial judge.

The preliminary motions and trial were before the Hon. Frank Cooper, judge of the United States District Court for the Northern District of New York. He announced in overruling defendant's preliminary motions:

> "I hold that within a reasonable time after the date of the offense alleged, after the date of the probable case is brought to the attention of the commissioner, he may issue a search warrant and if ten days has elapsed without its execution, he may change the date and thereby extend that search warrant or he may issue a new one. He has power to do both. It matters not which way he does it" (R. 11).

The Circuit Court of Appeals for the Second Circuit merely affirmed "Per Curiam," without opinion (R. 40).

Judgment to be Reviewed.

Motion to quash evidence (R. 10 and 12).

Motion denied (R. 15).

Objection to the use of evidence on trial obtained by Federal agents by search and seizure under color of authority of an illegal and void search warrant; "that said search warrant was void because it was not

served within ten days of the date of its issue; that the same was illegal and invalid because it was issued without probable cause; * * * the evidence obtained by means of such search and seizure cannot lawfully be used against the defendant * * * said illegal and unwarranted search * * * was made by Federal officers in violation of his constitutional rights, to be secure against unreasonable searches and seizures, to not be deprived of his liberty or property without due process of law, and to not be compelled to be a witness against himself, as guaranteed by the Fourth and Fifth Amendments to the Constitution of the United States" (R. 16 and 17).

Motions denied. Objections overruled. Evidence obtained by illegal search used, and formed sole basis of judgment of conviction on possession count. The jury disagreed on the sale count. The court rendered judgment of conviction on the possession count, and sentenced the defendant to pay a fine of $500.00 (R. 28).

Judgment of the United States Circuit Court of Appeals for the Second Circuit was as follows: "Per Curiam: Judgment affirmed" (R. 40).

Claims and Rulings.

On his preliminary motions petitioner claimed:

That the search warrant was illegal, because it was issued solely upon an affidavit in which there were no facts stated to constitute probable cause for issuing the same, but merely some alleged opinions and conclusions of the affiant, which he was not shown quali-

fied to give (R. 12). The court overruled the motion to declare the search warrant illegal and invalid on these grounds, without opinion (R. 15).

That the search warrant was void under Section 621, U. S. Code, p. 508, because it was not executed within ten days after its date. The warrant was issued on July 6, 1926. No attempt was made to execute it until August 2, 1926. On July 27, 1926, the Commissioner's stenographer changed the date of the warrant to that date. The court ruled "that within a reasonable time * * * after the date of the probable cause is brought to the attention of the commissioner, he may issue a search warrant and if ten days has elapsed without its execution, he may change the date and thereby extend that search warrant," and denied the motion to declare the search warrant void (R. 11).

That the search and seizure by Federal officers under color of authority of this illegal and void search warrant violated petitioner's rights under the Fourth Amendment, and the use of the evidence obtained by such search against him violated his rights under the Fifth Amendment. The court overruled the same without comment.

The evidence unlawfully obtained, as aforesaid, was used on the trial and the conviction based thereon, over appropriate objections and exceptions.

At the review on writ of error by the Circuit Court of Appeals, petitioner claimed in printed brief and oral argument that the search warrant was illegal and void for the reasons aforesaid, and that the conviction

was illegal, being based solely on the evidence illegally obtained, as aforesaid. But the Circuit Court of Appeals, nevertheless, affirmed without comment.

The jurisdiction of this Court is invoked under the Act of February 13, 1925, Sec. 240 (*a*), of the Judicial Code of the United States, which provides:

> "In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal."

The following cases are believed to sustain the jurisdiction of this Court:

Cameron v. *United States,* 231 U. S. 710.

Meccano, Limited, v. *John Wanamaker, New York,* 253 U. S. 136.

Statement of the Case.

On July 6, 1926, Federal Prohibition Agent Dodd made an affidavit before W. M. Arthur, U. S. Commissioner at Rome, N. Y., wherein he alleged that he believed that intoxicating liquors were being unlawfully possessed at the hotel in the Village of Bouckville, N. Y., and that the sources of his said belief

were as follows: "That on June 29, 1926, deponent personally purchased of a person in charge at said premises, a drink of intoxicating liquor, to wit, beer, containing more than one-half of one per cent of alcohol by volume, for the sum of $.10. That deponent tested the said beer, which he took with him, and same was found to contain 4.85 per cent of alcohol by volume" (R. 5). The commissioner thereupon, on said 6th day of July, 1926, issued a search warrant directing a search of said premises for intoxicating liquor. The search warrant was not executed within ten days after its date, as required by statute; but, twenty-one days after its date, it was returned to the commissioner by the prohibition agent in charge of the Syracuse office with the request that it be reissued or redated (R. 7). On August 2, 1926, three prohibition agents went to the premises described in the search warrant, to wit, the defendant's hotel premises at Bouckville, N. Y., searched the same, and claimed to have found a pint of gin and some alleged beer (R. 18).

The defendant was arraigned before the U. S. District Court for the Northern District of New York at the Utica term in the year 1926, upon the charges of illegally possessing the alleged intoxicating liquor seized under color of authority of said search warrant on August 2, 1926, and with illegal sale to Agent Dodd on June 29, 1926, of one glass of alleged intoxicating liquor, to wit, beer. At said time and before pleading, the defendant objected to the validity and legality of the said search warrant on the ground that

the same had been issued without probable cause, in violation of the Fourth Amendment to the Constitution of the United States and in violation of Sec. 615, U. S. Code, p. 508, and was therefore illegal, and the further ground that it was not executed within ten days of its date of issue, as required by Sec. 621, U. S. Code, p. 508, and was therefore void by statute. The defendant further moved at said time for the return of the property illegally seized under color of authority of said search warrant and to quash the evidence obtained by Federal prohibition agent by search and seizure under color of authority of said search warrant, on the ground that the said search by Federal officers, having been made under color of authority of an illegal and void search warrant, was therefore made without any warrant or authority in law, and in violation of the defendant's constitutional rights to be secure against unreasonable searches and seizures, and not to be compelled to testify against himself in a criminal action.

The trial court overruled all of the preliminary objections and motions, and the case proceeded to trial. Prohibition Agent Dodd testified substantially that on the 29th day of June, 1926, he visited the defendant's hotel premises and there bought from him a glass of beer; that he drank some of the said beer and retained some in his mouth; that he then left the hotel premises and went to his car, where he ejected the liquid from his mouth into a bottle and put some bichloride of mercury also into said bottle; that he later tested this liquid by comparing its boiling point

with the boiling point of water, "and by that method he found that the liquid in question contained 4.85 per cent of alcohol" (R. 23). But he found the boiling point of the liquid to be higher than the boiling point of water. Whereas, as the chemist testified, the boiling point of water is higher than the boiling point of a liquid containing alcohol. Of course Agent Dodd was not a chemist (R. 23). In his affidavit for search warrant he showed no qualification to determine the alcoholic content of a liquid by testing it. In his testimony before the court he showed that he could not intelligently have done so. It is thus seen that the search warrant was issued without probable cause, and that the agent's affidavit not only failed to state facts, but instead thereof stated merely his unqualified and erroneous opinions.

The jury did not find the defendant guilty of the alleged sale, but did find him guilty of possession of the alleged liquor seized on execution of the search warrant. The judgment of conviction, having been based solely upon the evidence illegally obtained by the prohibition agents through search and seizure at defendant's premises under color of authority of the illegal and void search warrant, was illegal and should have been reversed by the Circuit Court.

The case was reviewed on writ of error by the Circuit Court of Appeals for the Second Circuit and judgment was rendered on the 18th day of January, 1932, affirming the judgment of the District Court without opinion. Petition for rehearing was denied by the Circuit Court on February 1st, 1932 (R. 47).

Specification of Assigned Errors Intended to be Urged.

FIRST.

The trial court erred in denying the preliminary motion of the defendant to vacate the search warrant herein, because said search warrant was issued without probable cause, solely upon the affidavit of Prohibition Agent Dodd, which alleged no facts, and not sufficient facts, to constitute probable cause for issuing a search warrant.

SECOND.

The court erred in denying the preliminary motion of the defendant to declare the search warrant herein null and void, because said search warrant was dated and issued on the 6th day of July, 1926, and was not executed within ten days after its date of issue, and was, therefore, void under Sec. 621, U. S. Code, p. 508.

THIRD.

The court erred in denying the motion of the defendant to restrain the use of evidence obtained by Federal officers through the search and seizure under color of authority of the search warrant herein, because said search warrant was illegal and invalid; because said search warrant was void at the time it was served, and because said search and seizure was therefore made without any warrant or authority in law by Federal officers, in violaion of the defendant's

constitutional rights to be secure against unreasonable searches and seizures and to not be compelled to testify against himself, as guaranteed by the Fourth and Fifth Amendments to the Constitution of the United States.

FOURTH.

The court erred in admitting over the objections and exceptions of the defendant at the time of trial evidence obtained by means of the search and seizure of defendant's property by Federal officers on August 2nd, 1926, because said search and seizure was made under color of authority of an illegal, invalid and void search warrant, and was, therefore, made without any warrant or authority in law, in violation of defendant's constitutional rights to be secure against unreasonable searches and seizures, to not be deprived of his property without due process of law, and to not be compelled to be a witness against himself, as guaranteed by the Fourth and Fifth Amendments to the Constitution of the United States.

FIFTH.

The court erred in denying the motion of the defendant herein to set aside the verdict of the jury finding defendant guilty on the first count, possession, of the information herein, on the ground that there was not sufficient evidence and not any legal evidence to support such a verdict, because the only evidence presented on the trial on said count had been obtained through the illegal and unwarranted search and seiz-

ure of defendant's property, in violation of his constitutional rights, as aforesaid.

Summary of Argument.

The lower court erred in affirming the judgment herein, because said judgment was shown to have been based entirely upon illegal evidence, which had been obtained through an illegal search and seizure of petitioner's premises by Federal agents. This search was made under color of authority of an illegal and void search warrant.

The search warrant was illgal because it was issued without probable cause and solely upon an affidavit which failed to state facts to constitute probable cause, as required by law. The affidavit upon which the search warrant was issued stated merely some opinions and conclusions by the affiant, but did not show him qualified to give such opinions or conclusions. The substance of the said affidavit was that the affiant tested a sample of what he called beer and thereby found the same to have an unlawful alcoholic content. Not only did the affidavit fail to show the affiant qualified to make such test, but on the trial the affiant showed that he was not a chemist and did not and could not intelligently have made such test. The affiant's testimony showed that the sample of liquid he was trying to test had a higher boiling point than water. The affiant's alleged test, therefore, in so far as it showed anything, indicated an entire absence of alcohol in the sample he attempted to test.

The search warrant was void at the time it was served because it was not executed within ten days of its date. After that time, because of the failure to execute it within the ten-day period prescribed by statute, the warrant became void by statute.

The search and seizure, having been made under color of authority of an illegal and void search warrant, was therefore made without any warrant or authority in law. The search was therefore unreasonable and in violation of the Fourth Amendment, and the use of the illegal evidence, obtained by it, amounted to compelling the petitioner to give evidence against himself in a criminal action, in violation of the Fifth Amendment.

Timely and appropriate motions and objections were urged in behalf of the petitioner on all of the above grounds, both before the trial court, and especially at the review on writ of error before the Circuit Court of Appeals.

The judgment, being shown to be contrary to law in all the particulars as aforesaid, should have been reversed, yet the Circuit Court of Appeals affirmed the same, without opinion.

ARGUMENT.

Point I.

The search warrant was illegal and invalid because it was issued without probable cause, and the affidavit upon which it was issued did not set forth facts to establish grounds for issuing it.

The Fourth Amendment to the Constitution of the United States provides in part as follows:

> "No warants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched."

Section 615, U. S. Code, page 508, provides:

> "The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist."

The allegations in the affidavit upon which the search warrant was issued were:

> "That on June 29, 1926, deponent personally purchased of a person in charge at said premises a drink of intoxicating liquor, to wit, beer, containing more than one-half of one per cent of alcohol by volume, for the sum of $.10. That deponent tested the said beer which he took with him and same was found to contain 4.85% of alcohol by volume" (R. 5, 6).

The first-quoted sentence is merely a statement of the affiant's opinion or conclusion that what he purchased was beer having an unlawful alcoholic content. The second sentence purports to give the affiant's grounds or reason for his said conclusion. But these grounds are merely again his conclusions, and erroneous conclusions, as shown by his testimony at the trial. The affiant was not a chemist. He made no claim in the affidavit that he tasted or drank any of the alleged beer, or that he formed any opinion as to its alcoholic content by tasting or drinking it. He merely says that he took it with him and tested it. At

the trial he said that the way he did this was by retaining some of it in his mouth when he left the premises, going to his car and there ejecting it into a bottle, into which he also put bichloride of mercury, and later comparing the boiling point of water with that of the mixture. But he found the boiling point of the mixture to be higher than that of water. Whereas the boiling point of a mixture of alcohol and water is lower than that of water (R. 22, 23).

As shown above, there were no facts alleged in the affidavit to support a finding of probable cause. The warrant was therefore illegally issued in violation of the provisions of the Fourth Amendment to the Constitution and Section 615, U. S. Code (*supra*).

In *Wagner* v. *U. S.* (C. C. A., 8th Circuit), 8 F. 2d 581, at page 583, the Court said:

> "The evidence before the Judge or Commissioner who issues the search warrant must be such as would be admissible on trial. *Giles* v. *U. S.* (C. C. A.), 284 F. 208, 214. The Commissioner must be furnished with facts—not suspicions, beliefs, or surmises. *Veeder* v. *U. S.*, 252 F. 414, 164 C. C. A. 338. A mere conclusion is insufficient either in the affidavit or the complaint. *U. S.* v. *Kaplan* (D. C.), 286 F. 963, 969."

In *Kervin* v. *U. S.* (C. C. A., 2nd Circuit), 5 F. 2d 282, at page 285, the Court said:

> "Constitutional rights must be equally enforced in favor of the guilty and innocent. Unless sufficient facts are shown under oath to support the finding of probable cause, the right of

a person to be secure from unreasonable searches and seizures must not be violated."

In *Steele* v. *U. S.*, 267 U. S. 489, this Court said:

> "In a recent case we have had occasion to lay down what is probable cause for a search. *Carroll* v. *U. S.*, 267 U. S. 132, 45 S. Ct. 280, 69. L. Ed. —, decided March 2, 1925. If the facts and circumstances before the officer are such as to warrant a man of prudence and caution in believing that the offense has been committed, it is sufficient."

POINT II.

The warrant was not executed within ten days after its date. After the expiration of this time the warrant became and was void under the statute.

Section 621, U. S. Code, page 508, provides:

> "A search warrant must be executed and returned to the Judge or Commissioner who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void (June 15, 1917, C. 30, Title XI, Sec. 11, 40 Stat. 229)."

The Commissioner who issued the search warrant certified:

> "That the complaint or affidavit, upon which the search warrant was issued in the above entitled matter, was made before me on the 6th day of July, 1926. That the search warrant was issued on or about said 6th day of July, 1926, but was not executed within the ten

> days prescribed by statute, and was returned to me by Albert Vandiver, prohibition agent in charge of the Syracuse office, requesting that the same be reissued or redated, and my docket book shows that the same was reissued on the 27th day of July, 1926, and mailed back to said Vandiver" (R. 7).

The facts that the search warrant was dated and issued July 6, 1926, that it was not executed or returned within ten days after its date, that three weeks later its date was changed to July 27, 1926, and that this change of date was made without any new information or affidavit, are not disputed. The trial court even alleged them in a stipulation which it dictated at the trial (R. 17).

But the trial court erroneously ruled:

> "I hold that within a reasonable time after the date of the offense alleged, after the date of the probable cause is brought to the attention of the Commissioner, he may issue a search warrant; and, if ten days has elapsed without its execution, he may change the date and thereby extend that search warrant or he may issue a new one. He has power to do both. It matters not which way he does it" (R. 11).

The trial court was doubtless correct in ruling that within a reasonable time after the date of the alleged offense and when the probable cause is properly brought to his attention a commissioner may issue a search warrant. But clearly the court erred in holding that, after the lapse of ten days without its execution, he might lawfully change the date and thereby

extend that search warrant. This ruling is in direct conflict with the statute above quoted, which provides that "after the expiration of this time the warrant, unless executed, is void" (Sec. 621, *supra*). To permit such erroneous ruling to stand would be substantially to repeal the statute and set it at naught. Also, since there was no information, affidavit or probable cause submitted to or pending before the commissioner at the time, such redating or reissuing was in direct violation of the Fourth Amendment to the Constitution.

POINT III.

The search and seizure were illegal and violated the petitioner's rights under the Fourth Amendment to the Constitution of the United States. The use of the evidence obtained thereby violated his rights under the Fifth Amendment.

As shown in Point I, the search warrant was illegally issued and invalid because it was issued without probable cause. As shown in Point II, the warrant was void because it was not executed within ten days after its date. The search and seizure, having been made under color of authority of an invalid and void search warrant, was therefore made without any warrant or authority in law and in violation of the Fourth Amendment; and the use of the evidence obtained thereby violated the defendant's rights under the Fifth Amendment, because it in effect compelled him to be a witness against himself in a criminal action.

In *Gouled* v. *United States*, 255 U. S. 298, at page 303, this Court said:

"The Fourth Amendment reads, 'The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.' The part of the Fifth Amendment here involved reads, 'No person * * * shall be compelled in any criminal case to be a witness against himself.'

"It would not be possible to add to the emphasis with which the framers of our Constitution and the Court (in *Boyd* v. *United States,* 116 U. S., 616; in *Weeks* v. *United States,* 232 U. S., 383, and in *Silverthorne Lumber Co.* v. *United States,* 251 U. S., 285) have declared the importance to political liberty and to the welfare of our country of due observance of the rights guaranteed under the Constitution by these two amendments. The effect of the decisions cited is: that such rights are declared to be indispensible to the 'full enjoyment of personal security, personal liberty and private property;' that they are to be regarded as of the very essence of constitutional liberty, and that the guaranty of them is as important and as imperative as are the guaranties of the other fundamental rights of the individual citizen—the right to trial by jury, to writ of habeas corpus, and to due process of law. It has been repeatedly decided that these amendments should receive a liberal construction, so as to prevent stealthy encroachment upon or 'gradual depreciation' of the rights secured by them, by imperceptible practice of courts or by well-in-

tentioned but mistakenly over-zealous executive officers."

All of which is respectfully submitted in support of the petition, in the earnest hope that the prayer thereof may be granted by this Honorable Court.

IRVING K. BAXTER,
Counsel for Petitioner.

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(1988)